



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omwamba v Kenya National Library Services (Cause E723 of 2021)  
[2025] KEELRC 195 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 195 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E723 OF 2021  
J RIKA, J  
JANUARY 31, 2025**

**BETWEEN**

**POLYCARP O. OMWAMBA ..... CLAIMANT**

**AND**

**KENYA NATIONAL LIBRARY SERVICES ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim, dated 30<sup>th</sup> August 2021.
2. He avers that he was employed by the Respondent as a Librarian, through a letter dated 17<sup>th</sup> March 2016.
3. He was summarily dismissed by the Respondent, through a letter dated 3<sup>rd</sup> August 2021.
4. His last salary was Kshs. 85,000 monthly.
5. He avers that, he was not heard. Dismissal was unfair, unlawful and against rules of natural justice. The Respondent did not specify to the Claimant, what disciplinary rules, if any, were applicable.
6. He prays for: -
  - a. Reinstatement.
  - b. A permanent injunction restraining the Respondent, its servants and /or agents from arbitrary dismissal of the Claimant in the manner disclosed herein, or at all.
  - c. Any other suitable remedy.
  - d. Costs and interest.
7. The Respondent filed a Statement of Response and Counterclaim, dated 9<sup>th</sup> December 2021. It is conceded that the Claimant was employed and dismissed by the Respondent. His last monthly salary



was Kshs. 84,291. He was aware of the Human Resource Policy in place. He had been issued several warnings, and engaged in discussions about his omissions, substandard work, and delinquency. The letter of summary dismissal explained the reasons for the decision in detail. The Claim as framed is bad in law and defective.

8. The Respondent counterclaims that, upon his employment, the Claimant was entrusted various items by the Respondent. He mismanaged and /or misappropriated the Respondent's funds on several occasions. He exposed the Respondent to loss in the amount of Kshs. 72,053, made up as follows: -
  - a. Failing to remit all revenue collection of Kshs. 14,915.
  - b. Failing to surrender office phones at Kshs. 11,798.
  - c. Improper use of imprest advanced to him during Covid-19 containment.
  - d. Failing to properly account for and/ or keep proper record of petty cash voucher of Kshs. 28,240.
9. The Respondent counterclaims the sum of Kshs. 72,053 from the Claimant.
10. The Respondent urges the Court to dismiss the Claim, and allow the Counterclaim with costs.
11. The Claimant filed a Reply to the Statement of Response and Response to the Counterclaim, dated 5<sup>th</sup> December 2023. He reiterates that his dismissal was unfair and unlawful. He was not availed the Human Resource Policy. He was not aware about previous warnings issued to him. He denies mismanaging or misappropriating any funds. He urges the Court to allow his Claim and dismiss the Counterclaim with costs.
12. The Claimant gave evidence on 6<sup>th</sup> December 2023 and 13<sup>th</sup> June 2024 when he rested his case. The Respondent's Human Resource Officer Elias Ireri, and Internal Auditor Margaret Mwangi, gave evidence on 13<sup>th</sup> June 2024, closing the hearing. The Claim was last mentioned on 8<sup>th</sup> December 2024 when Parties confirmed filing and exchange of submissions.
13. The Claimant relied on his 2 witness statements and documents [1-6] as his evidence-in-chief. He reiterated that he was unfairly and unlawfully dismissed. He was not given an opportunity to defend himself. He only had one warning. He accounted for use of funds every month. He accounted for all imprests. He was in charge at Kisii Branch, and served diligently. The Respondent carried out an audit exercise. The report on record is dated 9<sup>th</sup> August 2021, while the Claimant left on 3<sup>rd</sup> August 2021. He was not aware about its contents. He was not interviewed by the Auditor. He does not owe the Respondent any money.
14. Cross-examined, he told the Court that he was not issued a warning, prior to dismissal. A letter dated 15<sup>th</sup> August 2017, alleged that he was absent during a training session. He had never been warned. There is another letter dated 3<sup>rd</sup> August 2017 on neglect of duty. It was a miscommunication. He wrote to the Respondent on 15<sup>th</sup> August 2017 and apologized for not attending a meeting. He did not think that the letters, related to misconduct.
15. Respondent's document 'RE16' is a letter from the Claimant to the Respondent. He asked to be pardoned for misappropriation of funds. He apologized. He did not see the letter to show cause, exhibited by the Respondent. He never saw the letter inviting him for disciplinary hearing. He saw these letters for the first time, at his Advocate's chambers. He saw the audit report after he left employment. It indicates he misappropriated the sum counterclaimed by the Respondent.



16. Redirected, he told the Court that the issues in the letters cited by the Respondent, were not pursued. He apologized because there was miscommunication, between him and the Chief Librarian. He did not receive 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> warnings. He did not receive invitation for disciplinary hearing. There was no evidence of service upon him, of the disciplinary invitation letter.
17. Elias Ileri relied on his witness statement, and documents filed by the Respondent [1-25] in his evidence-in-chief.
18. Cross-examined, he told the Court that among his duties, was to ensure Employees worked in harmony. If an issue was raised, it would be settled. Some issues raised against the Claimant, went back to the year 2016. It is polite to apologize. The Claimant did not acknowledge receipt of the letter inviting him for disciplinary hearing. He did not attend hearing. The committee went to him in Kisii. There is no attendance register, exhibited before the Court by the Respondent. Audit took place, after the Claimant left. He was not availed the audit report. The Claimant was based at Kisii. He was called for hearing through the departmental phone number. Ileri was not aware if the Claimant lived at Kayole, in Nairobi. The audit was a follow-up, to another exercise, which took place while the Claimant was in employment.
19. Redirected, Ileri told the Court that the letter to show cause, did not relate to issues that took place in 2016-2017. The Respondent posted letters, or used phone, in its communication. The audit report was not among the reasons given by the Respondent, in justifying termination.
20. Margaret Mwangi similarly adopted as her evidence-in-chief, her witness statement and documents filed by the Respondent.
21. Cross-examined, she confirmed that she is a qualified Auditor, and is familiar with international auditing standards. An Auditor should be independent. The audit subject is entitled to be heard. She did not consult the Claimant. She asked for all transactional documents. She got them from the finance department. She visited Kisii Library. She did not have documents showing that she was at Kisii. The Claimant had already been dismissed. Margaret did not know him, or know where he was. He was called by the Librarian-in-charge at Kisii, upon Margaret's request. Margaret did not agree that her audit was purposed on sanitizing an illegality. She was not aware if the Respondent made demand for the amount alleged to have been misappropriated by the Claimant.
22. Redirected, she told the Court that she audited operations of the Kisii Branch. The Claimant's presence was not necessary. He was not the subject. The audit documents are exhibited.
23. The issues are whether the Claimant's contract was fairly terminated under Sections 41, 43 and 45 of the *Employment Act*; whether he is entitled to reinstatement or other remedies; and whether the Respondent has established its Counterclaim.

**The Court Finds: -**

24. The Claimant was appointed as Librarian II by the Respondent, and deployed to Gilgil Branch, through a letter dated 17<sup>th</sup> March 2016
25. He was confirmed on 21<sup>st</sup> December 2016, after completing his probationary service successfully.
26. He was dismissed through a letter dated 3<sup>rd</sup> August 2021, signed by Acting CEO of the Respondent, Jack Wafula.



27. The Respondent referred to a meeting of the Human Resource Management Advisory Committee, held on 19<sup>th</sup> July 2021, which analysed, “ your case on management of Kisii KNLS Branch and found that you are in contravention of the following sections of the Human Resource Manual, 2017:
- I. Section 12.7 [a] habitual absenteeism.
  - II. Section 12.7 [c] negligence in performing duties.
  - III. Section 12.7 [i] embezzlement of funds.
  - IV. Section 12.13 [iv] dismissal after receiving 3<sup>rd</sup> warning, where an Employee continues with violations after the warning.”
28. The Claimant was dismissed and asked to hand over to Gladys Omari, with effect from 4<sup>th</sup> August 2021.
29. Procedure: There were some glaring flaws with the procedure leading to dismissal of the Claimant.
30. The letter of dismissal refers to a meeting held by the Human Resource Management Advisory Committee [HRMAC], on 19<sup>th</sup> July 2021, which recommended dismissal of the Claimant.
31. This meeting dealt with multiple agenda issues. It was not a disciplinary hearing confined to the disciplinary issues facing the Claimant.
32. The Claimant was not at the meeting. There was no evidence of his invitation. There was no letter or record of any phone calls made to him, requiring him to attend any disciplinary hearing.
33. The Human Resource Officer, Elias Ileri, told the Court that there was an invitation letter posted to the Claimant. There was no evidence of postage or receipt. He told the Court that the Claimant did not attend hearing.
34. The HRMAC minutes of the meeting held on 19<sup>th</sup> July 2021 do not make any note of invitation made to the Claimant, to attend the meeting. No attempt is made to enquire why he was not in attendance, accompanied by a colleague or a trade union representative, in accordance with Section 41 of the *Employment Act*.
35. The Court would agree with the Claimant, that he was not invited to appear before the HRMAC, and that the meeting proceeded without him. He was not afforded a fair opportunity to defend himself.
36. The HRMAC went about its business mechanically, identifying issues, making observations on those issues, and making recommendations, without recording what was the Claimant’s position. There were no witnesses called, or documents produced, to back up these observations and recommendations.
37. Procedure did not conform to the minimum statutory standards of fairness, under Sections 41 and 45 of the *Employment Act*.
38. Reasons: Evidence on record shows that the Claimant was in charge of the Kenya National Library Kisii Branch. The position carried various managerial responsibilities.
39. Complaints concerning his discharge of the managerial role, were many, recorded from a short while after he was employed, right through to the date of dismissal.
40. On 3<sup>rd</sup> August 2017, he was asked to show cause why disciplinary action should not issue against him, for failing to show up to conduct a Library User Education program. The Claimant wrote back, explaining that there was lack of clear communication between the staff, in the meeting leading to the



- conduct of the program. He failed to attend the morning session, but made up in the afternoon, by conducting the training.
41. A month later, on 4<sup>th</sup> September 2017, barely a month after the miscommunication on Library User Education, the Claimant was the recipient of another letter from the CEO, complaining about his neglect of duty. The Director called on the Claimant to respond to the letter to show cause dated 3<sup>rd</sup> August 2017. The record indicates that the Claimant responded, on 15<sup>th</sup> August 2017.
  42. On 13<sup>th</sup> January 2020, the Claimant wrote to the CEO, disclosing that revenue for December 2019, was not banked. He explained that his father was ailing, and he had applied for salary advance, to attend for his father's medical needs. He therefore converted revenue of Kshs. 40,453 into his own use, in the hope that he would repay, when his salary advance was processed. He did not get the salary advance. He tendered his apology to the CEO.
  43. On 14<sup>th</sup> April 2020, the CEO informed the Claimant that the unbanked revenue was recovered from his March 2020 salary. In the meantime, he was required to within 14 days, show cause why disciplinary action should not be taken against him, in accordance with clause 12.7 [i] of the Human Resource Manual, 2017.
  44. The Director issued the Claimant a letter of final warning, dated 9<sup>th</sup> December 2020 for gross misconduct. The Claimant acknowledged receipt of the letter, through his letter to the Chief Human Resource Officer dated 5<sup>th</sup> January 2020. He undertook not to repeat the same mistakes, or any other mistakes.
  45. But on 21<sup>st</sup> April 2021, the Claimant was alleged to have failed to apply resources assigned to Kisii Branch, in reopening of the Library after Covid-19 closure. He did not ensure there was 20 litres of hand-washing container and soap at the entrance; he did not implement guidelines on sanitizers, and social distancing; and he did not procure thermal gun and gloves.
  46. There were other incidences of mismanagement. He did not call staff meetings, and disposed of newspapers and other items without notice to colleagues. It was alleged further that staff at the Branch had complained that they collected revenue, but did not know what to do with it. The Claimant alleges he did not receive this letter, nor the invitation letter to attend disciplinary hearing which followed.
  47. The Court is nevertheless convinced that there was a pattern, clearly establishing that the Claimant had failed serially, in management of the Respondent's Kisii Branch, warranting that he is dismissed. There was a long list of incidents of mismanagement, casting long shadows, on the Claimant's suitability to lead the Branch. It is true that some of the issues had been dealt with when they arose, but the accusations surrounding the Claimant's post Covid-19 management and implementation of reopening protocols, left a lot of doubt on whether there were any lessons learnt by the Claimant, from his past management malpractices.
  48. The Claimant's conversion of revenue belonging to a public entity, in the hope that he would refund the money, at some future date, was an economic crime, over which the Claimant probably avoided stiffer consequences.
  49. In all, there is evidence that the Respondent had valid reason, justifying dismissal of the Claimant, as its Branch in-charge. The Respondent met the minimum statutory standards of substantive fairness, under Section 43 and 45 of the *Employment Act*.
  50. Remedies: He had worked for 5 years and 5 months, from 17<sup>th</sup> March 2016 to 4<sup>th</sup> August 2021. He caused, or contributed enormously, to the circumstances leading to his dismissal. Termination was based on valid reasons, but deficient in the manner of its execution. He pleads that his last salary was



Kshs. 85,000 monthly. He did not exhibit his pay slip. The Respondent pleads that the salary was Kshs. 84,291, but again did not exhibit a pay slip.

51. Section 20 of the *Employment Act* requires an Employer, to issue an Employee, a pay statement, at or before the salary is paid. Section 10 of the Act requires an Employer to state the details of the contract, including the amount payable. Section 10[7] of the Act requires that where details are disputed, and the Employer fails to produce the contract, or written particulars, the burden of proving or disproving the disputed particulars, shall rest with the Employer. In this case, the Respondent ought to have produced evidence, establishing that the Claimant's salary was Kshs. 84,291, and not Kshs. 85,000 monthly. The Court shall adopt a monthly salary of Kshs. 85,000 for purposes of assessing compensation.
52. The Court does not think that reinstatement of the Claimant as prayed, is a reasonable, practicable or lawful remedy. He caused or contributed enormously, to the circumstances leading to his dismissal, and there is no pathway back, for him to manage this strategic public utility.
53. He is granted compensation equivalent of 1-month salary at Kshs. 85,000, for unfair termination.
54. His prayer for permanent injunction, restraining the Respondent from dismissing him, in a manner disclosed in his Claim, is bizarre. He has already been dismissed, so what is there to restrain? Even if he has not been dismissed, would the Court place an order of permanent injunction upon an Employer, restraining an Employer from exercising its managerial prerogative of disciplining its Employee through dismissal? Such an order would amount to judicial overreach. The prayer is bizarre and is declined.
55. The Counterclaim was not established, through the evidence of the Human Resource Officer Elias Ileri, or that of the Internal Auditor, Margaret Mwangi. It was not clear to the Court if the revenue collection counterclaimed, was part of what was demanded from the Claimant, and recovered from his salary, as confirmed in the CEO's letter dated 14<sup>th</sup> April 2020. There likewise was no evidence by the Respondent's witnesses, concerning surrender of office phones, and failure to account for petty cash voucher of Kshs. 28,240. These were just bare pleadings made on counterclaim, unsupported by the evidence of the witnesses brought before the Court by the Respondent.
56. The Counterclaim is declined.
57. No order on the costs.
58. No order on interest.

In sum, it is ordered: -

- a. It is declared that termination was based on valid grounds, but flawed in the manner of its execution.
- b. The Respondent shall pay to the Claimant, equivalent of 1- month salary at Kshs. 85,000, in compensation for unfair termination.
- c. No order on the costs.
- d. No order on interest.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31<sup>ST</sup> DAY OF JANUARY 2025.**

**JAMES RIKA**



**JUDGE**

